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3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 KEVIN JOSEPH SMITH,

7 Petitioner,

8 v.

9 SCOTT FRAKES.

10 Respondent.

CASE NO. C10-5921-RJB-JRC

ORDER ADOPTING A REPORT  
AND RECOMMENDATION

11 The Court having reviewed the Report and Recommendation of the Hon. J. Richard  
12 Creatura, United States Magistrate Judge, objections to the Report and Recommendation, if any,  
13 and the remaining record, does hereby find and Order:

- 14 (1) The Court adopts the Report and Recommendation (Dkt. 37).  
15 (2) This petition is DISMISSED. The first ground for review is not cognizable  
16 in a habeas petition and the remaining grounds for relief are procedurally  
17 barred.  
18 (3) The Certificate of Appealability is DENIED.

19 The Clerk's office is directed to send a copy of this order to petitioner and to the  
20 Hon. J. Richard Creatura.

21 DATED this 9th day of January, 2012.

22 

23 ROBERT J. BRYAN  
24 United States District Judge